

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARCUS BUTLER)	
Claimant)	
VS.)	
)	Docket No. 206,552
SMITH TEMPORARY SERVICES)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from the Award entered by Administrative Law Judge Nelsonna Potts Barnes on February 25, 2000. The Appeals Board heard oral argument September 8, 2000.

APPEARANCES

Brian D. Pistotnik of Wichita, Kansas, appeared on behalf of claimant. Terry J. Torline of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

1. The Administrative Law Judge found claimant was entitled to temporary total disability benefits from August 22, 1997 through September 9, 1997, the date claimant was released with temporary work restrictions. Those benefits were not, however, mentioned in the "Award" section. Claimant contends he is entitled not only to benefits for August 22, 1997 through September 9, 1997, but also to an additional period from September 9, 1997 through October 15, 1997.

2. The nature and extent of claimant's disability. The ALJ found claimant had not proven any permanent disability. Claimant contends he is entitled to 10 percent disability to the left lower extremity based on a rating by Dr. Pedro A. Murati.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes the Award should be modified. Claimant is awarded benefits for a 5 percent permanent partial disability to the left lower extremity. Claimant's request to modify the period of temporary total disability benefits is denied.

Claimant injured his left knee on May 9, 1995, while unloading a machine used to bale cardboard. A coworker pushed a bale into claimant's knee and the knee struck a spike on the side of the machine. Dr. Kenneth A. Jansson treated claimant. He performed arthroscopic surgery, a lateral release, on August 22, 1997. On September 9, 1997, Dr. Jansson's office released claimant with restrictions against kneeling, squatting, climbing stairs, and climbing ladders. Claimant testified he could have worked once released with restrictions. The work would not have been the type he wanted, but he could have worked. The Board finds, based on claimant's testimony, that claimant was not temporarily and totally disabled after September 9, 1997.

The Board concludes claimant has, as a result of his injury, a 5 percent permanent partial disability to the left lower extremity. Dr. Jansson performed arthroscopic surgery on claimant's knee. After the surgery, Dr. Jansson's assistant saw claimant, but Dr. Jansson did not. He concluded there would be no impairment based on his experience doing this and similar surgeries. But he also testified that if claimant continued to have pain, he would give a 5 percent impairment rating. Claimant testified he initially experienced some relief after the surgery but the swelling and pain returned.

Dr. Pedro A. Murati rated the impairment as 7 percent using the Fourth Edition of the *AMA Guides to the Evaluation of Permanent Impairment* and 10 percent using the Third Edition, Revised. The Board notes Dr. Murati found crepitus while Dr. Jansson did not. Dr. Murati diagnosed arthritic changes not mentioned by Dr. Jansson. The Board concludes the ratings by Dr. Murati are too high but also concludes claimant has shown by a preponderance of the credible evidence that he has permanent impairment.

For the May 1995 date of accident, claimant's impairment should be based on the Third Edition, Revised, of the *AMA Guides to the Evaluation of Permanent Impairment*.

Based on the record as a whole, including claimant's testimony about his symptoms and Dr. Murati's rating, the Board concludes claimant has, and is entitled to benefits for, a 5 percent disability to the left lower extremity.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on February 25, 2000, should be, and the same is hereby, modified.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Marcus Butler, and against the respondent, Smith Temporary Services and its insurance carrier, Fireman's Fund Insurance Company, for an accidental injury which occurred May 9, 1995, and based upon an average weekly wage of \$200, for 2.71 weeks of temporary total disability compensation at the rate of \$133.34 per week or \$361.35, followed by 9.86 weeks at the rate of \$133.34 per week or \$1,314.73, for a 5% permanent partial disability to the left lower extremity, making a total award of \$1,676.08, all of which is presently due and owing less any amounts previously paid.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Terry J. Torline, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director